

The Symbolic Downfall of the ECtHR in Turkish Public Opinion

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Symbols are essential in every sphere of life. A gesture, a demeanour, or an act may have a lot more impact than a judgment of hundreds of pages or a speech that lasts for hours. To quote the U.S. Supreme Court, gestures and signs are “short cut[s] from mind to mind” ([319 U.S. 624](#), § 11). The European Court of Human Rights building, for example, resembles a ship; thus, the Court was perceived as the “flagship” of the long human rights journey. The building’s external is almost entirely made of glass, which is a reference to its transparency. A small piece of the Berlin Wall in the courtyard symbolizes that the Europeans will not to be divided again. When judges enter the Court, one stands up to show their respect to the Court’s authority.

Courts express themselves not only by judgments, but also indirectly in the execution process of their decisions. They express themselves via press releases, and sometimes they speak through their representatives. In fact, for the ordinary person who does not have legal expertise, a simple press release presenting the essence of a decision or a court representative’s attitude can mean much more than court decisions. Thus, the behaviour of the representatives of courts can have a significant impact on their image.

The Collapsing Prestige of the Court in Turkey

The European Court of Human Rights was considered to be very important in Turkey, mostly because it was perceived as the last resort for the frequent injustices within that State. The Court’s judgments and decisions were followed closely, and the outcomes of the pending cases were expected impatiently. The press releases of the Court were widely shared among Turkish social media users. Scholars were zealous to study its case-law. Lately, all this began to change. The Court seems to be losing its flag-bearer position on fundamental rights. Part of this change possibly stems from the Court’s so-called “[procedural turn](#).” In our opinion, however, there is at least one other reason for this change.

Traditionally in Turkey, the ECtHR Presidents have a strong influence on the public image of the Court and, consequently, on the outcome of the human rights controversies of the time. They have been as impactful as national politicians among the human rights community, if not more. For a long time, the impact of the Presidents of the Court – by their words and demeanour — has been very positive. Lately, however, the public image of the Court has started to collapse. Dismissed academics, imprisoned journalists, Kurdish dissidents, and many others are disappointed by the Court. The list is long: cases against academics, delayed cases filed against imprisoned journalists, the hazy futures of the *Demirtaş*

and *Kavala* cases; cases involving other aspects of the freedom of expression; applications that are rejected arbitrarily and without justification by a single judge, three applications that are similar in nature and communicated to the government on the same day (June 13, 2017), of which, [one](#) is decided in March 2018 and the other two ([1](#), [2](#)) are inexplicably still pending before the Court... These images of the Court have lately been haunting the minds of Turkish people. The Court's credibility has been diminishing year in and year out. The "pro-freedom" image the Strasbourg Court had in the '90s has been replaced by the image of an elimination apparatus which *obsessively* tries to get rid of its workload.

President Spano's Visit to Turkey – The Expectations

Under Article 9 of the Court's Rules of Procedure, the President of the ECtHR – Robert Spano — is the representative of the Court. Recently, Turkey received a most interesting visit from this President.

During his visit, Judge Spano first delivered a "[comprehensive speech](#)" before the Justice Academy of Turkey (the training institution for the future members of the Turkish judiciary). Then he met with the presidents of the top three courts in the Turkish judicial system and visited a couple of politicians as well. Finally, he gave a speech at Istanbul University, where he accepted the title of an honorary doctorate.

Already before Spano's arrival, this programme was criticised harshly by the Turkish academic community ([1](#), [2](#), [3](#)), by some [current](#) and [former](#) members of the European Parliament, and by several [national](#) and international human rights NGOs ([1](#), [2](#), [3](#)).

Nevertheless, some human rights defenders were excited about the upcoming visit. They expected Spano to have numerous all-inclusive meetings with NGOs and human rights activists. They hoped that he would react more strongly than the weak "condemnations" delivered by the other Council of Europe bodies concerning the current downfall of human rights in Turkey. He was *at least* expected to *mention* the two judgments ([Selahattin Demirtaş \(no.2\)](#) and [Kavala](#)), which the Turkish government persistently refuses to comply with.

A former judge of the Court, R#za Türmen, wrote a letter to Judge Spano, expecting the President to ask a couple of questions during his diplomatic exchanges, including "what kind of a State 'governed by the rule of law' is this?"

These hopes and expectation where not nearly realized.

President Spano's Visit to Turkey – The Grim Reality

Spano's "comprehensive speech" before the Justice Academy did not once mention the dire human rights situation in Turkey, the number of violations decided against Turkey, the number of cases pending to be implemented, etc. In fact, Spano seems

not to have adopted even a shade of a critical tone in any of his speeches made public (1, 2). He did not reveal the content of the meetings he had with the high-level governmental officials.

He also posed for the cameras alongside Turkish President Recep Tayyip Erdoğan and met with the Turkish Parliament's Speaker, Mustafa Şentop, who, by the way, after Spano's visit, did not even wait a full day to declare that [he favours the death penalty](#).

Spano's implicit refusal of not meeting with the NGOs, in a visit he was so closely connecting with the governmental officers, is incomprehensible. He could have at least met with the organizations of journalists deprived of their liberty or the NGOs of those arrested for political reasons, and listen to their take on what is happening in Turkey. This would have given the public a symbolic message of neutrality.

Moreover, while the [Academics for Peace case](#) is still pending before the Strasbourg Court, and the responsibility of the Istanbul University administration for the interference in question is obvious, Spano accepted the title of "honorary doctorate" from exactly that university. This "honour" caused a refreshing effect on public memory because the same university had "honoured" General Kenan Evren who was the leader in charge of the 1980 coup d'état. Moreover, the faculty administration had published a statement on its website labelling the "Academics for Peace" as terrorists a few years ago.

The final nail in the coffin came at the very end. For no apparent reason, Judge Spano visited Mardin, a Kurdish-dominated town led by a trustee appointed by the government after the elected mayor's dismissal. Firstly, during this visit, Judge Spano apparently was accompanied by a group of representatives of the ruling political party (AKP). Secondly, a photo was taken at the front door of a high school in Mardin during a weekend, on which all high schools were closed. Lastly, and arguably most surprisingly, the visit is not mentioned anywhere on the Court's website or on the official social media accounts which seem to post every official stop of the President. We are only aware of this visit via a tweet posted by the social media account of the ruling political party's women's branch of Mardin (an account that has not more than a few thousand followers) — a tweet that was deleted approximately nine hours after it was posted. As to our knowledge, there is not even one public official Court annotation making reference to this visit. The nature and the meaning of this visit remain highly controversial, and some highly respected academics such as Prof. Çalın has raised some aptly posed [questions on the matter](#), that remain to be answered by the President of the Court.



Another question can be added: A simple search in HUDOC platform reveals that the Court used the charming dictum “[*justice must not only be done, it must also seem to be done*](#)” in more than sixty judgments, showing its clear commitment to the idea that justice is not only about the verdict, but also about the appearance. Does Judge Spano believe that he, as the face of the Court, had given a “just” appearance in Turkey?

Conclusion

Spano's *visit (vacation?)* to Turkey came in a time when the prisons were packed with journalists and dissidents; in a time when a lawyer just died in a hunger strike, and another was in critical condition; in a time when Turkey had the second-highest number of implementation pending cases — and Judge Spano's visit, not only was not helpful in any way, but actually exacerbated the already deteriorated public image of the Court.

Symbols, as we said at the beginning, are the shortcuts from one mind to another. The Strasbourg judges' attitude and decisiveness who collected evidence on torture in the '90s used to have a positive symbolic meaning for the public. They had an encouraging effect on the Turkish human rights struggle. In the '00s, the immense knowledge of Jean-Paul Costa on the historical and political context of the Kurdish problem not only amazed the public but also built up hope. When Judge Sajo came to Ankara on his very first visit, his inch-to-inch cognizance of the Kızılay Square

in Ankara, with which he was only familiar through court cases he dealt with, had a symbolic meaning for the democrats in Turkey: “There are still judges in Strasbourg.” Undoubtedly, the visit of Judge Spano is also of symbolic significance, but unlike his predecessors, in a rather negative sense. It seems that the Court’s prestige is at an all-time low under his administration, at least in the eyes of the Turkish democratic sphere.

Asked to comment by Verfassungsblog, the ECtHR President’s office makes the following statement: “The speech in Mardin was not kept confidential but can in fact be downloaded freely on the Court’s website (,Tolerance and Diversity: Freedom of Thought, Conscience and Religion’). At this event he met representatives of the civil society, in particular he had an exchange of views with the President of the Bar association. The President was not aware whether or not there were members of the ruling party among the local officials he has met with on that occasion.”

